

The parties stipulated claimant suffered a work-related injury to her right upper extremity but disagreed on the nature and extent of her disability as well as whether she was entitled to temporary total disability compensation. The Administrative Law Judge (ALJ) found the claimant did not meet her burden of proof to establish that she was entitled to temporary total or permanent partial disability compensation but awarded authorized and unauthorized medical expenses related to claimant's treatment as well as medical mileage.

The claimant requests review and argues she met her burden of proof to establish she suffered temporary total disability from November 3, 2004, through April 5, 2005. Claimant further argues she met her burden of proof that she has a permanent partial 10 percent right upper extremity scheduled disability based upon her medical expert's rating.

Respondent argues the claimant was not taken off work by a physician and she failed to meet her burden of proof that she is entitled to temporary total disability compensation. Respondent further argues the treating physician concluded claimant did not suffer a permanent partial disability as a result of her work-related accident. Consequently, respondent requests the Board to affirm the ALJ's Award.

The issues for Board determination are the nature and extent of claimant's disability, if any, and whether claimant met her burden of proof that she is entitled to temporary total disability compensation.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The facts are not seriously disputed. Claimant was employed as a truck driver for respondent. She twisted and injured her right wrist while trying to open a trailer door on August 26, 2004. As she continued working she experienced aggravation of her wrist while shifting gears on the truck she drove as well as unlatching trailer doors.

As driving continued to aggravate her wrist, claimant reported the injury to her driver manager but was not referred for treatment. Finally, on November 2, 2004, when claimant returned with a load to Kansas City, she again told her driver manager that she still had a problem with her wrist and needed time off to deal with the problem. She still was not referred for medical treatment, so she called respondent's main office and reported her accident. Claimant was told someone would call her back about treatment but no one called. Claimant repeatedly called and was finally given the name of the person responsible for her case but repeated calls and messages left were unanswered.

Claimant testified she was unable to work from November 3, 2004, until April 5, 2005, when she returned to work for a different employer. Claimant testified that she quit driving for respondent because of her wrist pain. Nor did she work anywhere or draw unemployment during that time period, again because she felt her wrist was too painful for her to work.

On November 13, 2004, claimant went to Research Medical Center emergency room because her hand had turned purple. Claimant was provided medication and a splint. Sometime after this emergency room visit claimant received a letter from Christina

Garza, the respondent's coordinator for the claim. The letter identified the adjustor that would be handling the claim and indicated that if medical treatment was required the adjustor would arrange for such treatment.<sup>1</sup> When claimant again called she was told her claim could not be discussed because she had an attorney.

Claimant returned to Truman Medical Center and was provided additional medication and another splint. An EMG was also performed. A preliminary hearing was scheduled and respondent then sent claimant to Dr. Michael M. Hall, a board certified orthopedic surgeon, for treatment.

Dr. Hall examined claimant on March 9, 2005, and diagnosed claimant with de Quervain tendinitis. The doctor injected claimant's right wrist with steroids and lidocaine. The doctor opined there was no reason why claimant could not return to work and that she did not need any restrictions. Claimant returned for a follow-up visit with Dr. Hall on April 6, 2005, and noted the injection had helped quite a bit. The doctor noted that upon examination claimant had normal range of motion in her right upper extremity and he determined claimant was at maximum medical improvement. The doctor further opined that based upon the *AMA Guides*<sup>2</sup>, claimant did not have any permanent impairment as a result of her work-related injury.

Dr. Preston Brent Koprivica, board certified in occupational and emergency medicine, examined claimant on May 10, 2005, at her attorney's request. Dr. Koprivica diagnosed claimant with de Quervain's syndrome, aggravation of carpometacarpal degenerative disease to the thumb and right mild cubital tunnel syndrome. But for her injuries suffered working for respondent, Dr. Koprivica rated the claimant's mild cubital tunnel syndrome at 10 percent.

In addressing whether claimant suffered any permanent impairment the ALJ made the following analysis:

Nature and extent of disability. Dr. Koprivica saw the claimant for a previous work-related injury to the right wrist, and in 2002 he issued a 10% permanent impairment rating for the claimant's right upper extremity. Dr. Koprivica examined the claimant for the subject injury on May 10, 2005, and on that date he found that the claimant's pain complaints were not as significant as in 2002, and that the claimant's grip and pinch strength were actually improved as compared to 2002. Nonetheless, Dr. Koprivica said the claimant has a 10% impairment to the right upper extremity, over and above the previous 10%, due to cubital tunnel syndrome, which he did not find present in 2002. Dr. Koprivica's report seemed to indicate that he diagnosed cubital

---

<sup>1</sup> R.H. Trans., Cl. Ex. 1.

<sup>2</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

tunnel syndrome because the claimant's work activities were competent to result in cubital tunnel syndrome. There was no explanation given for what physical findings led Dr. Koprivica to the cubital tunnel diagnosis, and he admitted that the claimant's nerve conduction study was normal.

Dr. Hall testified that the normal nerve conduction study showed the claimant did not have cubital tunnel syndrome, and therefore it was not proper for Dr. Koprivica to issue a permanent impairment rating for that condition. Dr. Koprivica's finding of cubital tunnel syndrome and resulting permanent impairment from that condition is not considered credible. This was the only evidence of permanent impairment resulting from the work accident, so it is held that the claimant failed to prove any permanent impairment in this case.<sup>3</sup>

The Board agrees and affirms. Moreover, Dr. Hall concluded claimant did not suffer any permanent impairment as a result of the work-related injury to her right wrist.

Temporary total disability is defined in K.S.A. 44-510c(b)(2) as follows:

Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment.

In this instance, because of the pain claimant experienced in her wrist, she notified her employer and requested medical treatment. Her calls were essentially unanswered. She then sought emergency room treatment and finally was provided treatment by respondent. Claimant testified that the pain in her wrist prevented her from working from November 3, 2004, until she finally returned to work on April 5, 2005.

However, Dr. Hall testified that when he examined and treated claimant on March 9, 2005, she was able to work at that time. And the doctor further testified that after reviewing claimant's testimony, the medical records from Truman Medical Center as well as Dr. Koprivica's deposition testimony, he did not see any reason why claimant could not have worked during the time period between November 2, 2004, and March 9, 2005. Conversely, Dr. Koprivica opined claimant was temporarily and totally disabled from November 2, 2004, until April of 2005.<sup>4</sup>

As previously noted, K.S.A. 44-510c specifically requires an inability to engage in any employment in order to qualify for temporary total disability compensation. The claimant testified that her hand turned purple and she sought emergency room treatment. She further testified she was unable to work due to the pain in her wrist. And she neither sought employment nor unemployment compensation because she did not feel able to

---

<sup>3</sup> ALJ Award (Dec. 7, 2005) at 4.

<sup>4</sup> Koprivica Depo., Ex. 2 at 9.

work. The fact claimant was neither looking for work nor unemployment compensation somewhat corroborates her opinion that she could not work. Moreover, Dr. Koprivica opined claimant was temporarily totally disabled during this time period.

The Board concludes claimant met her burden of proof that she was entitled to temporary total disability benefits commencing November 3, 2004, and ending March 9, 2005, when the authorized medical provider released her to work without restrictions. Claimant had not been taken off work by any doctor but she had requested but did not receive authorized medical treatment. Under this circumstance her testimony meets her burden of proof that she could not safely operate a truck. The claimant's testimony alone is sufficient evidence of her physical condition.<sup>5</sup> Accordingly, the Board awards temporary total disability compensation commencing November 3, 2004, and ending March 9, 2005.

### **AWARD**

**WHEREFORE**, it is the decision of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated December 7, 2005, is modified to award claimant temporary total disability compensation from November 3, 2004 through March 9, 2005, and affirmed in all other respects.

The claimant is entitled to 3.14 weeks of temporary total disability compensation at the rate of \$243.34 or \$764.09 plus 15 weeks of temporary total disability compensation at the rate of \$288.21 or \$4,323.15 for a total due and owing of \$5,087.24.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May 2006.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

---

<sup>5</sup> *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

c: John G. O'Connor, Attorney for Claimant  
Frederick J. Greenbaum, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director